

# Senate Amendment 3360

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1 1 Amend Senate File 458 as follows:  
1 2 #1. Page 48, by inserting after line 28 the  
1 3 following:  
1 4 <DIVISION \_\_\_\_  
1 5 Sec. 201. PURPOSE AND DEFINITIONS.  
1 6 1. PURPOSE. The general assembly finds that the  
1 7 Iowa communications network is a valuable state asset  
1 8 that has served the people of the state well, but  
1 9 which requires significant ongoing financial support  
1 10 from the state in the form of annual appropriations.  
1 11 The operation of a telecommunications network is a  
1 12 function that can be and generally is conducted by  
1 13 private enterprise. It is in the public interest to  
1 14 sell the Iowa communications network to a qualified  
1 15 private business enterprise that will commit to  
1 16 provide the same secure low-cost high-quality service  
1 17 to state and federal agencies and military  
1 18 installations now provided by the network. Through  
1 19 such a sale, the state would eliminate the need for  
1 20 ongoing annual appropriations while preserving the key  
1 21 benefits enjoyed by the state under the present state  
1 22 ownership of the network. The state also expects to  
1 23 obtain sufficient proceeds from such a sale to cover  
1 24 existing obligations and to realize additional  
1 25 proceeds above the level of such obligations. Given  
1 26 the current depressed state of the telecommunications  
1 27 industry, the state can reasonably be expected to  
1 28 maximize sales proceeds by allowing a purchaser a  
1 29 period of time in which to assemble financing for its  
1 30 purchase. During the interim between enactment of  
1 31 this division of this Act and completion of a sale,  
1 32 the services of a private-enterprise manager with  
1 33 experience operating telecommunications networks can  
1 34 reasonably be expected to reduce the costs of  
1 35 operating the Iowa communications network, thereby  
1 36 lowering annual appropriations.  
1 37 2. DEFINITIONS. As used in this division of this  
1 38 Act, unless the context otherwise requires:  
1 39 a. "Board" means the state network privatization  
1 40 board.  
1 41 b. "Commission" means the Iowa telecommunications  
1 42 and technology commission established in section 8D.3  
1 43 to oversee the operations of the network.  
1 44 c. "Management contract" means an agreement  
1 45 between the board and the manager for services to  
1 46 oversee and operate the network on behalf of the  
1 47 state.  
1 48 d. "Manager" means the private entity selected by  
1 49 the board to oversee and operate the network on behalf  
1 50 of the state.  
2 1 e. "Network" means the Iowa or state  
2 2 communications network as defined in section 8D.2.  
2 3 f. "Out-of-pocket expenses" means moneys paid to  
2 4 an unaffiliated third party for engineering, legal,  
2 5 consulting, or other services or goods by a manager or  
2 6 purchaser.  
2 7 g. "Purchaser" means the entity that is selected  
2 8 by the board to purchase the network from the state.  
2 9 h. "Required third-party approval" means any  
2 10 consent, conveyance, approval, or waiver that must be  
2 11 granted by a private, governmental, or quasi-  
2 12 governmental third party in order for the purchaser to  
2 13 receive clear title to all network assets and the  
2 14 right to use the network assets free of adverse  
2 15 claims. Required third-party approvals include but  
2 16 are not limited to all of the following:  
2 17 (1) Approvals of assignments to the purchaser of  
2 18 the state's rights under leases or contracts between  
2 19 the state and the third party.  
2 20 (2) Conveyance to the purchaser of property that  
2 21 the third party currently leases to the state on a

2 22 term with less than fifteen years remaining.  
2 23 (3) Release of restrictions in contracts that  
2 24 require that the state operate the network.  
2 25 i. "Sales contract" means the contract between the  
2 26 state as seller, represented by the board, and the  
2 27 purchaser, for sale of the network to the purchaser.  
2 28 Sec. 202. STATE NETWORK PRIVATIZATION BOARD  
2 29 CREATED == DUTIES.  
2 30 1. A state network privatization board is created.  
2 31 The board shall consist of the following members:  
2 32 a. A chairperson member appointed by the  
2 33 legislative council, subject to confirmation by the  
2 34 senate.  
2 35 b. A member, who shall not be of the same  
2 36 political party as the chairperson, appointed by the  
2 37 governor subject to confirmation by the senate.  
2 38 c. The adjutant general or the adjutant general's  
2 39 designee.  
2 40 2. The board shall do all of the following:  
2 41 a. Issue a request for proposals from qualified  
2 42 entities interested in serving as the manager of the  
2 43 network. This request for proposals shall be issued  
2 44 by July 1, 2004, and responses to the request for  
2 45 proposals shall be due by August 1, 2004.  
2 46 b. Select a manager and enter into a management  
2 47 contract with the manager by October 1, 2004. The  
2 48 management contract shall provide for the continuation  
2 49 of all services currently being provided to state and  
2 50 federal agencies and military installations pursuant  
3 1 to chapter 8D, at the rates specified therein, for the  
3 2 duration of the contract. The contract shall also  
3 3 specify the manager's authority in relation to the  
3 4 duties of the commission during the period between  
3 5 execution of the management contract and closing of  
3 6 the sale of the network. The commission shall  
3 7 establish a dispute resolution process regarding rate  
3 8 increases, quality of service issues, and other areas  
3 9 of dispute involving network subscribers. The  
3 10 commission shall also make recommendations regarding  
3 11 imposition of an ongoing dispute resolution and  
3 12 appeals process commencing with the closing of the  
3 13 sale of the network.  
3 14 c. Issue a request for proposals from qualified  
3 15 entities for the purchase of the network. This  
3 16 request for proposals shall be issued by January 1,  
3 17 2005, and responses to the request for proposals shall  
3 18 be due by May 1, 2005.  
3 19 d. Utilizing the criteria set forth in sections  
3 20 203 and 204 of this Act, select a purchaser and enter  
3 21 into a sales contract with the purchaser by October 1,  
3 22 2005.  
3 23 e. Immediately upon execution of the management  
3 24 contract and the sales contract by the majority of the  
3 25 board, transmit the executed contract to the general  
3 26 assembly and to the governor. The board shall have  
3 27 full authority to enter into the management contract  
3 28 and the sales contract on behalf of the state,  
3 29 provided that the general assembly by legislation  
3 30 enacted regarding the specific purchase and approved  
3 31 by the governor, within thirty days after transmittal  
3 32 to the general assembly and the governor in the case  
3 33 of the management contract, and within sixty days  
3 34 after transmittal to the general assembly and the  
3 35 governor in the case of the sales contract, may  
3 36 disapprove the board's action, in which case the  
3 37 disapproved contract shall have no force and effect.  
3 38 In the event of such disapproval, the state shall pay  
3 39 the manager or the purchaser, as the case may be,  
3 40 reasonable out-of-pocket expenses incurred in  
3 41 preparing a proposal and performing prior to  
3 42 disapproval, but such expenses shall not exceed two  
3 43 hundred thousand dollars in the case of disapproval of  
3 44 the management contract and five hundred thousand  
3 45 dollars in the case of disapproval of the sales  
3 46 contract.  
3 47 f. Cause the sales contract to require closing by  
3 48 October 1, 2007, allowing time for the state to obtain  
3 49 third-party approvals as required by section 206 of  
3 50 this Act, including the filing of any necessary  
4 1 eminent domain actions, and for the purchaser to  
4 2 secure financing.

4 3 g. Execute all necessary documents relating to the  
4 4 closing of the sale of the network. The board may  
4 5 direct any other applicable official to assist in the  
4 6 execution of necessary documents relating to the  
4 7 closing.  
4 8 h. Require by written directive that all state  
4 9 officials provide information and records concerning  
4 10 the network to the board, to the manager, or to a  
4 11 person submitting a proposal to purchase the network,  
4 12 whenever the board requires such provision of such  
4 13 records and other information.  
4 14 i. Take all other steps necessary and proper as  
4 15 needed to carry out its responsibilities enumerated in  
4 16 this subsection. The board may adopt necessary rules  
4 17 pursuant to chapter 17A to administer this division of  
4 18 this Act.

4 19 Sec. 203. MINIMUM QUALIFICATIONS OF PURCHASER.  
4 20 The purchaser shall meet the following requirements:  
4 21 1. The principal place of business of the  
4 22 purchaser and any parent of the purchaser shall be  
4 23 located in the state of Iowa.  
4 24 2. For national security reasons, and because of  
4 25 the extensive military use of the network, the  
4 26 purchaser shall possess national security approval.

4 27 Sec. 204. CRITERIA FOR SELECTION OF PURCHASER.  
4 28 After issuing a request for proposals for the purchase  
4 29 of the network and considering the proposals received,  
4 30 the board shall select the highest and best offer for  
4 31 purchase of the network from those persons submitting  
4 32 proposals which meet all of the following criteria:  
4 33 1. Satisfy the minimum qualifications of this  
4 34 division of this Act.  
4 35 2. Submit a proposal in compliance with the  
4 36 request for proposals.  
4 37 3. Demonstrate a likelihood of being able to  
4 38 obtain any financing necessary to close the  
4 39 transaction. However, the board shall not require  
4 40 that the purchaser have a commitment for financing to  
4 41 award the contract, but shall allow the purchaser at  
4 42 least one year to obtain any necessary financing. The  
4 43 board may also in its discretion consider proposals  
4 44 involving financing of the sale by the state.  
4 45 4. Agree to continue all services currently being  
4 46 provided to state and federal agencies and military  
4 47 installations for the next ten years, with any annual  
4 48 rate increase not to exceed five percent per year,  
4 49 provided that the purchaser shall not be required to  
4 50 supply at such restricted prices a quantity or quality  
5 1 of service greater than that provided by the network  
5 2 as of execution of the contract for sale of the  
5 3 network.

5 4 Sec. 205. CLOSING OF SALE. Any debt of the state  
5 5 related to the network or other liens against network  
5 6 assets shall be discharged out of the state's proceeds  
5 7 of closing, so that the purchaser receives marketable  
5 8 title to the network. The purchaser shall receive  
5 9 bills of sale, in the case of personal property, and  
5 10 deeds, in the case of real property, transferring all  
5 11 network assets to the purchaser. The state shall also  
5 12 transfer its interest in right-of-way and leases and  
5 13 easements for uses of rights-of-way.

5 14 Sec. 206. THIRD-PARTY APPROVALS.  
5 15 1. The state shall exercise all reasonable efforts  
5 16 to obtain each required third-party approval,  
5 17 including where necessary by use of eminent domain  
5 18 proceedings. To the extent feasible, the state may  
5 19 pay the costs of obtaining required third-party  
5 20 approvals out of the proceeds of sale rather than from  
5 21 the general fund of the state. In the event the state  
5 22 fails to obtain a required third-party approval, the  
5 23 purchaser may terminate the sales contract without  
5 24 penalty and shall be reimbursed by the state for  
5 25 reasonable out-of-pocket expenses incurred in  
5 26 preparing its proposal and fulfilling its obligations  
5 27 under the sales contract, not to exceed two million  
5 28 dollars.  
5 29 2. The board and the purchaser shall develop a  
5 30 list of required third-party approvals and persons who  
5 31 may have claims that would constitute required third-  
5 32 party approvals if valid. The board shall mail to  
5 33 each person on the list at their last known address a

5 34 notice that provides a description of the sale and  
5 35 invites the recipient to submit a claim on a form  
5 36 developed by the board by a deadline set by the board.  
5 37 The claim or interest of any person who fails to  
5 38 timely file a claim shall be deemed discharged and  
5 39 forfeited, and such person shall be forever barred and  
5 40 estopped from taking any action against the state or  
5 41 purchaser that would in any way interfere with the  
5 42 purchaser's use of the network. In addition, the  
5 43 board shall publish the notice in newspapers of  
5 44 general circulation in the state of Iowa, and failure  
5 45 to file a timely claim shall bar all persons whose  
5 46 rights could constitutionally be affected by such  
5 47 notice, just as if such person had been mailed notice.  
5 48 3. Any eminent domain or other proceeding to  
5 49 obtain a required third-party approval shall be  
5 50 promptly filed by the attorney general at the request  
6 1 of the board and shall be added to the calendar of any  
6 2 trial or appellate court of this state so that the  
6 3 deadline in section 202 of this Act for closing the  
6 4 sale can be met.  
6 5 Sec. \_\_\_\_\_. REMOVAL OF RESTRICTIONS == REPEAL OF  
6 6 CHAPTER 8D. Chapter 8D is repealed, effective as of  
6 7 the date of the closing of the sale of the network  
6 8 under this division of this Act, as certified by the  
6 9 chairperson of the board to the governor.  
6 10 Sec. \_\_\_\_\_. ASSISTANCE OF OTHER STATE AGENCIES.  
6 11 1. The attorney general shall provide legal advice  
6 12 to the board.  
6 13 2. All other state agencies shall provide whatever  
6 14 assistance may reasonably be required by the board in  
6 15 carrying out its duties under this division of this  
6 16 Act.>  
6 17 #2. By renumbering as necessary.  
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6 21 \_\_\_\_\_  
6 22 JEFF LAMBERTI  
6 23 SF 458.310 80  
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